

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
CHAMBER SUMMONS NO. 1661 OF 2003
IN
EXECUTION APPLICATION (LODG) NO. 489 OF 2003
IN
ARBITRATION AWARD DATED 24TH SEPTEMBER, 2002

Supreme Offshore Constructions
& Financial Services Ltd.

.. Applicant
(Decree Holder)

v/s.
Mazgaon Dock Ltd.

.. Respondent
(Judgement Debtor)

Leon Samuel with Ms. J. Mukherjee i/b. Advani and co. for
the plaintiffs.
Sachin Mahadik i/b. Udwadia and Udeshi for defendants.

CORAM: S.U. KAMDAR, J.

DATE : 10TH JANUARY, 2005.

P.C :

1. The present application is taken out by the
judgement debtor inter-alia for recording a satisfaction in
respect of the decree dated 24.9.2002.

2. Few facts of the case are as under : An award was passed on 24.9.2002 for a sum of Rs.6.5 crores. It is an admitted position before me that under an agreement entered into by and between the applicant and the respondent company it was agreed that if the payment is made of Rs.2.5 crores and of an outstanding amount as on 31.3.2003 in the Books of accounts of the respondent judgement debtor then the award would be marked satisfied. Under clause-5 of the said agreement it is provided that if such an amount is not paid by 16.1.2003 then the said agreement should be treated as null and void.

3. Pursuant thereof it is not in dispute that the sum of Rs.2.5 crores was paid on or before stipulated date. However the dispute is about payment of an amount of Rs.13,51,142/- which was found due and payable as amount outstanding in the books of account of the respondent Judgement debtor. Admittedly the said amount is not paid within the prescribed period of time i.e. 16.1.2003 as contemplated under Clause-5 of the said agreement. However, it is also not in dispute that the said amount was

paid on 8.5.2003 by the respondent/deGREE holder. While making the aforesaid payment it has been stated as under:

" Please find enclosed herewith our cheque No.411827 dated 9.5.2003 drawn on State Bank of India in your favour for a sum of Rs.13,51,142/- (Rupees: Thirteen Lakhs, Fifty One Thousand, One Hundred Forty Two Only) in full and final settlement of your Invoice dated 8.5.2003. A sum of Rs.28,983/- has been deducted as TDS. By this payment, MDL has fulfilled all its obligation arising out of the said minutes dated 22.12.2002 and nothing remain to be fulfilled."

4. In pursuance to the said letter dated 8.5.2003 the applicant/deGREE holder has received the amount of Rs.13,42,000/- by cheque and has encashed the said cheque. The learned counsel for the judgment debtor has further fairly admitted tht in respect of a different contract there are arbitration proceedings pending and that they erroneously made certain claims contrary to the said agreement dated 22.12.2003 but he submitted tht as soon as the said fact was brought to the notice they withdrew the said claims. According to the learned counsel for the decree holder the agreement dated 22.12.20023 specifies the payment of the amount by 16.1.2003 under clause-5 thereof. It further provides that non-payment within the time stipulated would end the said agreement. Learned counsel

for the decree holder has further vehemently contended that he has accepted the amount of Rs.13,42,000/- only as part payment and not in full satisfaction of decree. He has further contended that even though by the said letter dated 8.5.2003 it was made specifically clear that the said amount is tendered pursuant to the said agreement dated 22.12.2002 and the same is in full and final settlement of all claims contemplated therein still the acceptance of the said amount would not bind him with the said settlement and he would be entitled to the entire decreetal claim. He has further contended that he has not certified the receipt of the aforesaid payment in full and final satisfaction of the decree as contemplated under order 21 rule 2 sub-rule 1 and therefore also the present application is neither maintainable nor this court is entitled to record any satisfaction and or discharge of the decreetal claim as claimed by the respondent/judgement debtor herein. The learned counsel has relied upon the judgement of the Apex Court in support of the aforesaid contention reported in *Badamo Devi and Ors. vs Sagar Sharma (1999) 6 SCC 30* and has contended that the application made in the present case is null and void and not maintainable and thus liable to be

dismissed.

5. I have considered the aforesaid contention of the learned counsel for the applicant/decreed holder. I am of the view that the said contention has no merits. Firstly while dealing with the contention of law on the basis of Order-21 rule 2 of Civil Procedure Code is concerned the only thing that is required to be stated is that the present application is under Order 21 sub-rule 2 and not under sub-rule 1 of Rule 2 of Order 21. Sub-rule 2 empowers the court to certify the receipt of payment by the applicant decreed holder in full and final satisfaction provided the judgment debtor produces the necessary evidence in support of his application for the same. Thus under sub-rule 2 certification of receipt of payment in full and final satisfaction of decree by the decreed holder is not a necessary requirement. In my view the present application is maintainable under Order-21 rule-2 sub-rule 2. The respondent judgment debtors has produced sufficient material evidence and infact there is no dispute whatsoever by and between the parties either pertaining to settlement and/or receipt of money thereunde. Only

question arises is to determine that whether delay in payment has brought an end to the settlement as claimed by the decree holder or not.

6. Now turning to argument on merits it is an admitted position that the amount of Rs.2.5 crores is paid within time i.e. before 16.1.2003 as contemplated under settlement agreement dated 22.12.2002. Insofar as the amount pertaining to the claim of Rs.13,51,472/- is concerned it is not in dispute that the said payment is beyond time. However the question is that whether the decree holder having accepted the payment in full and final satisfaction of the claim under the settlement dated 22.12.2002 is entitled to wriggle out of the said settlement. Under the provisions of section 59 of the contract Act whenever the payment is made by a debtor with certain directions then the creditor is required to adjust the said payment as per the directions or not at all. If the creditor accept the said payment then the same is deemed to have been accepted by him in acceptance with the direction of the debtor and discharges him from the said debt accordingly. In the present case by letter dated

8.5.2003 the judgment debtor has tendered the said amount towards full and final settlement as per the agreement dated 22.12.2002. The applicant decree holder has accepted the said payment without any objection and without any protest. Thus in my view the applicant have by their own conduct extended the time to make payment as contemplated under settlement agreement dated 22.12.2002. By virtue of the acceptance of the payment on 8.5.2003 the judgement debtors has accepted the said agreement as valid, subsisting and binding even on 8.5.2003 and therefore they are not entitled to contend that the delay in making payment has discharged their obligation to accept the said amount in full and final settlement. In view of the aforesaid position in law I make the present Chamber Summons absolute in terms of prayer clause(a), (b) and (c).

SD/-
